

Before the  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

In the Matter of )  
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Rules and Regulations Implementing the ) CH Docket No. 02-278; DA 04-3836  
Telephone Consumer Protection Act of 1991 )  
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The Heritage Company, located at 2402 Wildwood Avenue, Suite 500, Sherwood, Arkansas 72120, hereby submits comments to the Federal Communications Commission (FCC) regarding the Petition for Declaratory Ruling filed by the Consumer Bankers Association (CBA). We support CBA's petition of the Commission to preempt certain sections of the Wisconsin Statutes and Wisconsin Administrative Code as applied to interstate telephone calls for the reasons described below:

1. The State of Wisconsin has promulgated regulations on interstate commerce that are in direct conflict with regulations established by the Commission implementing the Telephone Consumers Protection Act of 1991 (TCPA). There are four specific areas of interstate commerce that are regulated by both the state of Wisconsin and the Federal Government that are of interest here:
  - a. Calls made to residential subscribers who have made an inquiry regarding goods or services but who have not specifically requested a telemarketing call regarding that inquiry.
  - b. Calls made to residential subscribers who have made a purchase from the caller.
  - c. Calls made to existing customers for the purpose of offering additional or different goods and services than those the customer currently purchases.
  - d. Calls from an affiliate of the entity with whom the residential subscriber has an established business relationship.

It is clear from Article VI of the US Constitution ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land") that in any conflict between state law and federal law that the federal law has a superior position. Indeed, the Commission stated clearly in its July 2003 rules implementing TCPA that any state regulation that conflicted with the Commission's rules would almost certainly be preempted, and it should do so in this instance.

2. The EBR safe harbor rules in implementing the National Do Not Call Registry (NDNCR) were carefully crafted to balance the legitimate interests of businesses and consumers by allowing telephone-based transactions to continue to occur despite a consumer's having placed his phone number on the do not call list. By applying more restrictive rules upon interstate calls made to consumers in Wisconsin, that state is attempting to accomplish two goals:
  - a. Creating new, restrictive rules for interstate telemarketing calls beyond those allowed by the Commission.
  - b. Frustrating the federal scheme that had devised uniform rules for interstate telemarketing calls by making special requirements for calls made into Wisconsin.

Clearly, neither of these goals is supported by the Commission's July 2003 rules. Neither Wisconsin nor any other state may create regulations that conflict with or contradict federal law (including regulatory rules, based upon numerous precedents). Wisconsin's rules violate the federal scheme, and the Commission is well within its legal authority to preempt the state's law.

3. It is our hope that the Commission will preempt the Wisconsin statute as not only a means to correct this state's inappropriate actions but also to set a clear precedent for existing or future state regulations in the area of interstate telemarketing.

We appreciate the opportunity to publicly submit comments on these important rules affecting the teleservices industry.

For the company,

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